

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

IN THE MATTER OF THE	)	No. 55398-4-I
PERSONAL RESTRAINT OF:	)	
RUBEN CAMACHO CONTRERAS,	)	DIVISION ONE
	)	UNPUBLISHED OPINION
Petitioner.	)	
	)	FILED: June 1, 2009

PER CURIAM. Ruben Contreras pleaded guilty to one count of vehicular homicide and one count of felony hit and run in King County No. 00-1-10758-3. The court imposed 120-month sentences on both counts, which were above the standard range. Contreras appealed the exceptional sentences to this court, which affirmed in State v. Contreras, No. 48059-6-I.

Contreras now files this personal restraint petition contending that the sentences he received are constitutionally infirm under Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L.Ed.2d 403 (2004), because the aggravating factors were not found by a jury. Citing State v. Suleiman, 158 Wn.2d 280, 143 P.3d 795 (2006), the State does not dispute that the exceptional sentences violate Blakely, but argues the sentencing error is harmless. We disagree. Not only was the sentencing court's aggravating factor improper under Blakely and Suleiman, it was clearly not harmless under In re Pers. Restraint of Hall, 163 Wn.2d 346, 181 P.3d 799 (2008).<sup>1</sup> To the extent the parties disagree as to the permissible

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<sup>1</sup> In Hall, the Court characterized the issue to be decided as "whether the failure to submit a sentencing factor to the jury could be a harmless error in this case. Hall argues that [i]t would have violated state law to submit aggravating [circumstances] to the jury to be determined beyond a reasonable doubt at the time of [his] trial and that therefore, the error in this case cannot be harmless. Suppl. Br. of Pet'r at 18. We agree." 163 Wn.2d at 351.

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procedure to be employed on remand, those contentions are best resolved in the trial court following remand. See State v. Doney, 165 Wn.2d 400, 198 P.3d 483 (2008).

The sentence is vacated and the case is remanded for resentencing and such other proceedings as are consistent with this opinion.

For the court:

Dwyer, A.C.J.

Schneider, C.J.

Leach, J.